

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

KIRSTEN H. LUKAS, SP 2013-BR-077 Appl. under Sect(s). 8-301 and 8-914 of the Zoning Ordinance to permit a home child care facility and reduction in minimum yard requirements based on errors in building locations to permit accessory storage structure to remain 4.8 ft. from side lot line and accessory structures to remain 15.5 ft. with open deck 8.7 ft. and 6.0 ft. with open deck 3.6 ft. from side lot lines. Located at 8704 Norfolk Ave., Annandale, 22003, on approx. 22,195 sq. ft. of land zoned R-1. Braddock District. Tax Map 59-3 ((10)) 112. Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 18, 2013; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 22,195 square feet recorded, 22,911 square feet computed.
4. In this case with respect to the greenhouse and open deck, a trellis and a shed, the Board believes that these were noncompliance issues that were done in good faith.
5. The Board does not think that the reduction impairs the purpose or intent of the Ordinance.
6. The Board does not think that it is detrimental to the use and enjoyment of other property in the vicinity.
7. It does not create an unsafe condition with respect to the property or public streets.
8. The Board thinks that forcing compliance with the minimum yard requirements would cause an unreasonable hardship in this case.
9. There is no opposition to those setbacks right now.
10. The one on the west side clearly has no impact.
11. There is open space there.
12. It is not occupied.
13. The one on the east side, the Board has had Mr. Johnson here who has not had any opposition to that either.
14. The Board does not think it is going to have any impact.
15. The Board thinks that those are acceptable.
16. With respect to the home childcare facility, the Board would note that there is a recommendation in the staff report for approval.
17. In some ways this is a very nice location for a home childcare facility, given that it is at the end of the street.

18. The Board does not have some of the issues that it has had in the past with cul-de-sacs and parking issues that impact a lot of the neighbors, because of the nature of the stub here.
19. It is nice that it allows you to turn around there.
20. The proximity to the school and the open space, again, on the west is good.
21. The primary issue that the Board has is the Johnsons, and that is the immediate neighbors to the north and to the east.
22. It is nice to see applicants come in who have worked together with the neighbors to identify problems and identify solutions.
23. You can have seven children here by right.
24. So in this case, in some ways, by increasing it to twelve, the Board has a better result, because it is addressing issues that already exist and putting development conditions in place to ensure that the Board is able to address them.
25. The Board feels like the conditions are reasonable that have been proposed and agreed to.
26. Certainly it is going to take continued cooperation and diligence on the applicant's part to make sure that the parents who are coming in with their children understand the importance of this being a residential area, and they need to make sure that they are quiet.
27. That is something that the applicant can certainly impose and be diligent on communicating.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;
- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

1. This approval is granted to the applicant, Kirsten Lukas, only and is not transferable without further action of the Board, and is for the location indicated on the application, 8704 Norfolk Ave., and is not transferable to other land.
2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Dominion Surveyors, Inc., dated August 22, 2013, as revised through October 28, 2013, signed by George M. O'Quinn, Land Surveyor, and approved with this application, as qualified by these development conditions.
3. A copy of this Special Permit **SHALL BE POSTED in a conspicuous place on the property of the use** and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.
4. The maximum hours of operation of the home child care facility shall be limited to 6:30 a.m. to 6:00 p.m., Monday through Friday.
5. The maximum number of children on site at any one time shall be 12, excluding the applicant's own children.
6. All drop-off of children shall take place utilizing on-street parking. Pick-up may occur within the driveway or the on-street parking.
7. The dwelling that contains the child care facility shall be the primary residence of the applicant.

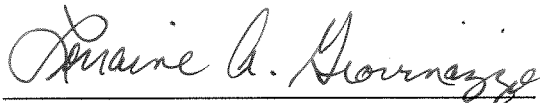
8. There shall be no signage associated with the home child care facility.
9. The applicant shall install a new gate, to eliminate noise when used, for parents to access the home child care facility.
10. The applicant shall install evergreen shrubs to create a hedgerow along the fence line abutting the adjacent residential properties to the east within six months of approval of this special permit.
11. The applicant shall install foot-lighting, as well as timers on the existing wall lights, along the eastern side of the dwelling along the path for parents to drop-off and pick-up children.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, six (6) months after the date of approval unless the use has been established as outlined above. The number of children shall not be increased above seven until all conditions are met. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Beard seconded the motion, which carried by a vote of 7-0.

A Copy Teste:



Lorraine A. Giovinazzo, Deputy Clerk
Board of Zoning Appeals